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Subject BNA: W.R. Grace to Pay EPA Record \$250 Million Under
Proposed Settlement in Libby Lawsuit

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News

Superfund W.R. Grace to Pay EPA Record \$250 Million Under Proposed Settlement in Libby Lawsuit

Global specialty chemical supplier W. R. Grace & Co. has agreed to pay \$250 million--the highest sum in the history of the Environmental Protection Agency's superfund program--to reimburse the federal government for investigation and the cost of cleaning up asbestos contamination in Libby, Mont., federal prosecutors said March 11 (*In re W.R. Grace & Co.*, Bankr. D. Del., No. 01-01139, 3/11/08).


The proposed settlement would resolve claims against the company under the Comprehensive Environmental Response, Compensation, and Liability Act for environmental response costs at the site in northwestern Montana, according to the Department of Justice.

Specifically, DOJ said the agreement would settle a bankruptcy claim brought by the federal government to recover money for past and future costs of cleaning up contaminated schools, homes, and businesses in Libby.

The proposed settlement was filed in U.S. Bankruptcy Court for the District of Delaware. W.R. Grace filed for bankruptcy protection in April 2001.

According to court documents, W.R. Grace owned and operated a vermiculite mine and vermiculite processing facilities in and near Libby from 1963 to 1990. The ore contained impurities including asbestos and vermiculite, and asbestos particles have been found in various locations in and around Libby.

The Libby Asbestos Site includes an inactive vermiculite mine seven miles northeast of Libby and portions of the town of itself.


When EPA added the site to the superfund National Priorities List in October 2002, the agency determined that all areas in Libby that have been contaminated with asbestos from operations at the former mine should be added to the NPL for superfund cleanups. The listing allowed EPA to clean up asbestos contamination throughout the town ((206 DEN A-4, 10/24/02) .

EPA has been removing asbestos-contaminated soil and other materials in and

near Libby since May 2000, according to the court document.

Criminal Case Pending

"Grace is pleased with the agreement," company spokesman Greg Euston told BNA March 11. He decline to make any further statement, saying the judge in a pending criminal case against Grace has asked the parties not to comment.

The criminal case has been pending since February 2005. In October 2007, the U.S. Court of Appeals for the Ninth Circuit agreed to re-hear appeals on pretrial witness issues in the case, with the full 15-member court presiding (*United States v. W.R. Grace*, , 9th Cir., No. 06-30192, order issued 10/29/07; 210 DEN A-8, 10/31/07) .

The federal government obtained an indictment against W.R. Grace and several of its officers alleging criminal acts related to the improper disposal of asbestos-contaminated vermiculite at its mining and milling operations outside Libby. The company's activities from the early 1960s to the early 1990s have been linked to hundreds of deaths and illnesses.


W.R. Grace, based in Columbia, Md., and 61 affiliated companies had filed for bankruptcy in 2001 following a steep increase in asbestos-related lawsuits. In March 2003, EPA filed claims against the company and a subsidiary, Kootenai Development Co., to recover past and future cleanup costs in and around Libby.


In August 2003, the U.S. District Court for the District of Montana awarded EPA more than \$54 million for cleanup costs incurred by the agency through Dec. 31, 2001. The Ninth Circuit affirmed the district court's judgment and the U.S. Supreme Court denied certiorari.

The Justice Department said that award has not been paid because of W.R. Grace's bankruptcy. This proposed settlement would resolve the 2003 judgment as well as continuing cleanup costs EPA has incurred since Dec. 31, 2001, and will incur, federal prosecutors said.

The proposed settlement is subject to a 30-day comment period.

According to DOJ, asbestos is a recognized human carcinogen and is known to cause lung cancer and mesothelioma, a lethal tumor of the lining of the chest and abdominal cavities. Exposure to asbestos also can cause asbestosis, a disease characterized by scarring of the lung.

The settlement announced March 11 is the second major superfund agreement involving W.R. Grace in recent months. In December 2007, the government announced that the company had agreed to a \$34 million bankruptcy settlement for cleanup costs at 32 superfund sites across the country ((244 DEN A-9, 12/20/07) .

The proposed consent agreement in In re W.R. Grace & Co., will be available on the Justice Department website at http://www.usdoj.gov/enrd/Consent_Decrees.html . 

By Linda Roeder